

HARRY V. SHOOP, FREDERICK J. RICHARDSON, JOSEPH
D. ROSENLIB, JOSEPH E. P. McCANN, AND JUNIOR K.
SCHOOLCRAFT

JANUARY 31, 1956.—Committed to the Committee of the Whole House and
ordered to be printed.

Mr. BURDICK, from the Committee on the Judiciary, submitted the
following

R E P O R T

[To accompany H. R. 3980]

The Committee on the Judiciary to whom was referred the bill
(H. R. 3980) for the relief of Harry V. Shoop, Frederick J. Richardson,
Joseph D. Rosenlieb, Joseph E. P. McCann, and Junior K. Schoolcraft,
having considered the same, report favorably thereon with amend-
ments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 3, after the name Richardson, insert "Joseph D.
Rosenlieb, Joseph E. P. McCann,".

Page 1, line 5, after "\$410.40" insert "\$636.11, \$904.80,".

Amend title so as to read:

A bill for the relief of Harry V. Shoop, Frederick J. Richardson, Joseph D.
Rosenlieb, Joseph E. P. McCann, and Junior K. Schoolcraft.

PURPOSE

The purpose of the proposed legislation is to relieve Harry V. Shoop,
Frederick J. Richardson, Joseph D. Rosenlieb, Joseph E. P. McCann,
and Junior K. Schoolcraft of all liability to refund to the United States
the sums of \$1,190.20, \$410.40, \$636.11, \$904.80, and \$1,176.80,
respectively.

STATEMENT OF FACTS

These individuals were civilian employees of the Department of the
Air Force who were members of the National Guard of Ohio and were
called to active duty to assist prison officials and police in quelling a
riot at the Ohio State Penitentiary, Columbus, Ohio, in 1952. They
were excused from their duties at Wright-Patterson Air Force Base by
proper administrative authority based upon regulations of the Depart-

ment of the Air Force. They were regarded as having the status of "excused leave," and therefore entitled to continue to receive their pay from the Air Force during the time that they were on active duty with the National Guard.

On April 27, 1954, the Comptroller General ruled that the payments made by the Air Force to these five people while they were on active duty with the National Guard were without legal authority. Therefore the payments were made to the men under the authority of the then existing regulations of the Air Force, and the men accepted the payments in good faith. It was the subsequent ruling of the Comptroller General which resulted in characterizing the payments as over-payments of compensation. Under these circumstances the committee finds that it is only fair to relieve these men of the obligation to refund the money so paid to them. Therefore the committee recommends that the bill be favorably considered.

The report of the Department of the Air Force which recommends that H. R. 3980 be enacted with the addition of the two names included in the amendment recommended by the committee is as follows:

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, August 11, 1955.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for a report from the Department of the Air Force on H. R. 3980, 84th Congress, a bill for the relief of Harry V. Shoop, Frederick J. Richardson, and Junior K. Schoolcraft.

The bill, if enacted, would relieve the above-named civilian employees of the Department of the Air Force of all liability to refund to the United States the sums of \$1,190.20, \$410.40, and \$1,176.80, respectively.

These three employees, together with Joseph D. Rosenlieb and Joseph E. P. McCann, work at Wright-Patterson Air Force Base, Dayton, Ohio, and are members of the National Guard of the State of Ohio. They were called to active duty to assist prison officials and State police in quelling a riot at the Ohio State Penitentiary, Columbus, Ohio, in 1952. Their services were required for a period of time even after the riot had been quelled in order to carry out emergency directives of the Governor of Ohio. These employees were excused from their duties at Wright-Patterson Air Force Base by proper administrative authority based upon regulations of the Department of the Air Force which were considered to have the force and effect of law. Their status being one of "excused leave," they continued to receive pay from the Air Force.

On 27 April 1954, the Comptroller General rules that payments made by the Air Force to these five people while they were on active duty with the Ohio National Guard were without legal authority. Subsequently, the pertinent Air Force regulations were amended to reflect the Comptroller General's opinion. As a consequence, unless H. R. 3980 is enacted, these five men will have to make complete restitution.

The Department of the Air Force recommends enactment of H. R. 3980 and further recommends that the names Joseph D. Rosenlieb and Joseph E. P. McCann be added to it and the amounts \$636.11 and \$904.80 be inserted before the word "respectively" on line 6. All five gentlemen acted in good faith and served in the public interest in protecting society from 800 dangerous criminals.

The Bureau of the Budget has advised that it has no objection to the submission of this report.

Sincerely yours,

DAVID S. SMITH,
Assistant Secretary of the Air Force.

JUNE 17, 1954.

HON. PAUL F. SCHENCK,
*United States Representative, Third District, Ohio,
Washington, D. C.*

DEAR SIR: This letter is a request for advice and relief of payment in excess of \$2,200 to the United States Government which we, the undersigned, consider a grossly unjust debt.

On November 10, 1952 certain units of the Ohio National Guard were ordered to report for duty at Camp Perry, Ohio, in connection with the prison riots at Columbus, Ohio. 1st Lt. Harry V. Shoop and Sgt. J. K. Schoolcraft, the undersigned, who are employees at Wright-Patterson Air Force Base, Ohio, were ordered to active duty at that time. We served on duty until February 1953.

We wish to point out that we did not request administrative leave but expected to be on a leave without pay status during this period of absence from WPAFB. It was determined by Brig. Gen. C. Pratt Brown, commanding officer, WPAFB, (see enclosure dated January 12, 1953) that administrative leave could be granted to include 90 days. In a first indorsement (see enclosure) of basic letter dated December 12, 1952, from Col. Jack W. Bowman, Chief, Civilian Personnel Division, it was also determined that 60 to 90 days administrative leave could be granted for this emergency. In letter dated April 27, 1954 (see enclosure) from Lindsay C. Warren, Comptroller General of the United States, it was determined that there was no statutory authority for granting administrative leave in this case.

During the period of time from November 1952 to April 1954 when a final determination was made in our case, we were accordingly paid administrative leave from November 7, 1952 to February 7, 1953 without charge to our annual leave since we understood that WPAFB and USAF desired this procedure. This amounted in excess of \$1,100 per person. Before this understanding was reached, 1 and possibly 2 payroll checks were returned to WPAFB because we did not desire to use annual leave for this duty. It is to be noted that we were paid entirely out of State funds for our service with the National Guard while at Camp Perry, Ohio and, therefore, we were not in a dual Federal payroll status.

We understood that the Payroll Section at WPAFB was notified in March 1953 that payment to subjects was in error; however, we were not notified until May 1954 that a refund of this money was expected.

The Federal income tax has already been paid on this salary and you can readily see that this action will create greater financial obligations on our part should we be forced to pay back this money.

Since we did not request to be paid for this leave, and considering the fact that the commander WPAFB and Headquarters USAF have apparently made a mistake in their interpretation of the regulations plus the fact that we understand there is no provision for free legal council to us, we are appealing to you for advice and assistance in this matter.

It is understood from Frederick J. Richardson, who is a master sergeant in the Ohio National Guard, that he was also on active duty at Camp Perry, Ohio, during this period of time. He is also an employee at WPAFB and has the same problem as we do. He is indebted to the Government for approximately \$400 and he also wishes to make an appeal to you for help at this time.

We understand that congressional relief is the only thing available to us now. It is requested that you give consideration to our problem as soon as possible since it is expected of us to start making payment on this indebtedness if we cannot obtain some relief within a reasonable length of time.

Very truly yours,

HARRY V. SHOOP,
Dayton, Ohio.
JUNIOR K. SCHOOLCRAFT,
Fairborn, Ohio.
FREDERICK J. RICHARDSON,
Dayton, Ohio.

Subscribed and sworn to before me this 28th day of December 1955.

[SEAL]

A. CARL KRETCHMAN,
Notary Public in and for Montgomery County, Ohio.

My commission expires September 17, 1956.

HARRY V. SHOOP AND OTHERS

HEADQUARTERS, AIR MATERIEL COMMAND,
WRIGHT-PATTERSON AIR FORCE BASE,
Dayton, Ohio, December 22, 1954.

Mr. FREDERICK J. RICHARDSON,
Dayton, Ohio.

DEAR MR. RICHARDSON: The following is a certified statement of the time and amount of overpayment for which the General Accounting Office wishes a refund. Payments made January 4, 1953, through February 14, 1953, as follows:

Pay period:	Amount
Jan. 4 to Jan. 17, 1953.....	\$136. 80
Jan. 18 to Jan. 31, 1953.....	136. 80
Feb. 1 to Feb. 14, 1953.....	136. 80
Total amount paid.....	410. 40

Notice of exception Nos. 400006, 400007, 400008 issued against entire amount by Dayton regional office August 4, 1953.

B. G. ROBBINS,
Chief, Area C, Civilian Personnel Branch,
Central Civilian Personnel Office.

HEADQUARTERS, AIR MATERIEL COMMAND,
WRIGHT-PATTERSON AIR FORCE BASE,
Dayton, Ohio, December 22, 1954.

Mr. HARRY V. SHOOP,
Dayton, Ohio.

DEAR MR. SHOOP: The following is a certified statement of the time and amount of overpayment for which the General Accounting Office wishes a refund. Payments made November 9, 1952 through February 7, 1953 as follows:

Pay period:	Amount
Nov. 9 to 22 Nov. 1952.....	\$164. 00
Nov. 23 to 6 Dec. 1952.....	10. 92
Jan. 4 to 17 Jan. 1953.....	740. 48
Jan. 18 to 31 Jan. 1953.....	183. 20
Feb. 1 to 14 Feb. 1953.....	91. 20
Total amount paid.....	1, 190. 20

Notices of exception Nos. 400001, 400002, 400003, 400004, 400005 issued against entire amount by Dayton regional office August 4, 1953.

B. G. ROBBINS,
Chief, Area C, Civilian Personnel Branch, Central Civilian Personnel Office.

HEADQUARTERS, AIR MATERIEL COMMAND,
WRIGHT-PATTERSON AIR FORCE BASE,
Dayton, Ohio, December 22, 1954.

Mr. JUNIOR K. SCHOOLCRAFT,
Fairborn, Ohio.

DEAR MR. SCHOOLCRAFT: The following is a certified statement of the time and amount of overpayment for which the General Accounting Office wishes a refund.

Payments made November 9, 1952 through February 7, 1953 as follows:

Pay period:	Amount
Nov. 9 to 22 Nov. 1952.....	\$164. 00
Nov. 23 to 6 Dec. 1952.....	10. 40
Jan. 4 to 17 Jan. 1953.....	740. 80
Jan. 18 to 31 Jan. 1953.....	174. 40
Feb. 1 to 14 Feb. 1953.....	87. 20

Total amount paid..... 1, 176. 80

Notices of exception Nos. 400001, 400002, 400003, 400004, 400005 issued against entire amount by Dayton regional office August 4, 1953.

B. G. ROBBINS,
Chief, Area C, Civilian Personnel Branch, Central Civilian Personnel Office.

[First endorsement]

DECEMBER 24, 1952.

To: Commanding General, Wright-Patterson Air Force Base,
(Attention of EWACP, Wright-Patterson Air Force Base, Ohio.)
HEADQUARTERS AIR MATERIEL COMMAND,
Wright-Patterson Air Force Base, Ohio.

1. It is the opinion of this Headquarters that the National Guard duty cited is clearly within the criteria of AF L1.3-16a, AFM 40-1 as constructive duty without charge to leave.

2. Currently, regulations place no time limit on the constructive duty due to an actual emergency. However, it is our opinion that the amount of time which an employee may be carried on the payroll without loss of pay depends upon the nature of the emergency and upon the amount of time the commander of the installation can spare him. The latter should be affected to some extent by the former. In any case, it is believed that 60 to 90 days for an emergency such as this one is long enough to carry the employees without loss of pay or charge to leave. Therefore, it is recommended that the Adjutant General of the National Guard and the employees concerned be notified of a reasonable date by which the latter must return to their duties at the base, and that no salary compensation will be paid beyond that time.

By command of Lieutenant General Rawlings.

JOHN E. TAYLOR, *Acting*
(For Jack W. Bowman, Colonel, USAF, Chief, Civilian Personnel
Division).

JANUARY 12, 1953.

Subject: Active Duty 137th M. P. Co., Ohio National Guard.

To STATE OF OHIO,
Adjutant General's Department.
(Attention of Maj. Gen. Albert E. Henderson, Building 101,
Fort Hayes, Columbus 18, Ohio.)

1. Reference your special order No. 315, November 10, 1952, activating certain units of the Ohio National Guard for duty at Camp Perry, Ohio. 1st Lt. Harry V. Shoop and Sgt. J. K. Schoolcraft, civilian employees of this base and members of the 137th M. P. Company, were called to active duty by above order.

2. Administrative determination has been made by Headquarters, Air Materiel Command, USAF, that such service meets the criteria established for excused absence from duty without charge to leave. However, that headquarters has recommended that excused absence should be limited, not to exceed 90 days. Accordingly, you are advised that, after February 7, 1953, Lieutenant Shoop and Sergeant Schoolcraft will not be carried in a pay status on the rolls of this base without charge to accrued leave. The men in question will have the option of using accrued annual leave or of being placed in a leave without pay status.

3. Request that this headquarters be advised (attention of EWF) of the option selected by Lieutenant Shoop and Sergeant Schoolcraft.

C. PRATT BROWN,
Brigadier General, USAF, Commanding.

APRIL 27, 1954.

Lt. Col. W. S. HARRIS,
USAF, Office, Director of Finance,
Department of the Air Force.

DEAR COLONEL HARRIS: Reference is made to your letter of January 27, 1954, to Mr. E. L. Fisher, General Counsel, General Accounting Office, requesting removal of certain exceptions taken by this Office in connection with the administrative excusing of five employees for extended National Guard duty in connection with certain prison riots and requesting and opinion as to the validity of the Air Force regulation (par. 16a, sec. 3, ch. AF L1, AFM 40-1) under which the employees were excused without loss of pay or charge to leave.

You are advised that since no statutory authority has been found for the administrative action taken in this case, no basis exists for this Office to remove the exceptions in question. However, it is understood from informal contact with a representative of the Air Force that a modification of the existing regulation is

now in preparation, the terms of which are such that a situation such as presented in this case is not expected to arise again.

Sincerely,

LINDSAY C. WARREN,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, September 7, 1954.

HON. PAUL F. SCHENCK,
House of Representatives.

DEAR MR. SCHENCK: Further reference is made to your letter of recent date, acknowledged by office letter of July 14, 1954, B-118529, enclosing a letter of June 17 from Harry V. Shoop, box 476, rural route No. 8, Dayton, Ohio, and two other employees of the Department of the Air Force, to you, relative to overpayments of compensation received by them while absent from their Federal duties, incident to a call to service with the Ohio National Guard during the period November 7, 1952, to February 7, 1953.

The matter first was brought to the attention of the General Accounting Office in March 1953, as a result of inquiries of certain employees of the Department of the Navy and the Bureau of Internal Revenue who also were called to duty with the Ohio National Guard during the same period. Those employees requested their respective agencies that they be accorded the same privilege extended by the Department of the Air Force to its employees of being continued in a pay status without charge to annual leave during the period of their service with the guard. The former agencies properly had charged their employees with annual leave or had placed them in a leave-without-pay status during the said period.

The rule applicable to cases of the nature here involved is that wage-board employees compensated upon per diem, hourly, or piecework bases are not entitled to compensation, except when authorized by law, for days on which they render no service. That rule was established in early decisions of the former Comptroller of the Treasury long prior to the establishment of the Office of the Comptroller General of the United States by the Budget and Accounting Act of 1921. (See 8 Comp. Dec. 219 (1901).) That norm, based upon the absence of legislation authorizing such payments to per diem employees, has been restated from time to time by decisions of this Office as occasion required. By decision of June 17, 1952 (B-108085, 31 Comp. Gen. 663), the Secretary of the Navy, in response to an inquiry whether the established rule might not have been modified by the Federal Employees Pay Act of 1945, as amended (5 U. S. C. 901, et seq.), and other recent legislation, was informed as follows, quoting from the syllabus of the said published decision:

"Per diem wage-board employees who are prevented from reporting for work by an act of God, failure of transportation facilities, emergency conditions other than acts of God which are beyond control of the employees or the agency, or when an activity is closed by administrative order, may not be excused without loss of compensation or charge to annual leave in the absence of a specific legislative provision therefor."

A copy of that decision is enclosed for your convenience. In accordance with the Office practice of distributing decisions of general import and application, duplicated copies of that decision were distributed in July 1952 to agencies on the mailing list of the General Accounting Office, which list includes the Department of the Air Force. The quarterly printed pamphlet, containing all published decisions of the next preceding quarter, including the decision referred to, was released to the agencies on the mailing list in September 1952. It would appear, therefore—aside from the fact that the rule had been controlling law for over 50 years—that the Department of the Air Force had ample time to notify its establishments of the error prior to the happening of the event which resulted in the illegal payments.

It also appears from the statement in the letter from Mr. Shoop and the other employees, to you, that they had grave doubts as to the propriety of the payments made to them by the Department of the Air Force during the period of absence from duty with that Department and that they had expected to be placed on annual leave or granted leave without pay during such period. What led the administrative officials to a contrary conclusion, that is, that such employees might be administratively excused for such a long period as 90 days without loss of compensation or charge to annual leave—even in the light of erroneous regulations—is not understood.

On June 11, 1954, there was enacted Public Law 395, amending Joint Resolution of June 29, 1938, 52 Stat. 1246 (which resolution authorizes holiday pay to regular wage board per diem and other employees) by providing, prospectively, that such employees may be paid for days on which they are relieved or prevented from working by administrative order issued under such regulations as may be promulgated by the President. A copy of Public Law 395 and of the Senate committee report thereon, also, are enclosed. While official regulations implementing that act, as yet have not been promulgated, it is interesting to note that a tentative draft thereof discussed informally between representatives of this Office and the Civil Service Commission—to which agency the President has delegated authority to issue the regulations pursuant to Public Law 395—provides generally a limitation of 3 days upon the period for which employees may be excused administratively without charge to annual leave or loss of pay—an almost negligible period when compared with the 90-day period for which Mr. Shoop and his associates were excused.

Further, the case of those employees is to be distinguished from that in which employees, through administrative error, are led to perform otherwise unauthorized services from which the United States derives a direct benefit and, who, in equity, should be compensated for their services. Here, the Government received no perceivable benefit from the activity of its employees with the Ohio National Guard; consequently, the payments made to them by the Federal Government are purely gratuitous and completely without authority of law.

In light of the foregoing facts, and also of the facts (1) that the employees of the Department of the Navy and of the Bureau of Internal Revenue who performed like services lawfully may not be compensated by the Government for the period of their absence from duty, (2) that the Air Force employees were not without doubt as to the propriety of the payments received by them, and (3) that the period involved was of long duration, I am sure you will agree that I may not in good conscience remove the exceptions taken to the illegal payments made to Mr. Shoop and his coemployees, and that steps to recover the amounts of such overpayments properly may not be discontinued.

Sincerely yours,

R. F. KELLER,
Acting Comptroller General of the United States.

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